

render the station not operational for a period of 30 days or more.

(b) Pursuant to §1.955 of this chapter, if a station licensed under this part discontinues operation on a permanent basis, the licensee must cancel the license. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued. See §101.305 for additional rules regarding temporary and permanent discontinuation of service.

[63 FR 68983, Dec. 14, 1998]

#### § 101.67 License period.

Licenses for stations authorized under this part will be issued for a period not to exceed 10 years. Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the date (month and day) selected by licensees in the year of expiration.

#### POLICIES GOVERNING MICROWAVE RELOCATION FROM THE 1850-1990 AND 2110-2200 MHz BANDS

#### § 101.69 Transition of the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

Fixed Microwave Services (FMS) frequencies in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands listed in §§101.147(c), (d) and (e) have been allocated for use by emerging technology (ET) services, including Personal Communications Services (PCS). The rules in this section provide for a transition period during which ET licensees may relocate existing FMS licensees using these frequencies to other media or other fixed channels, including those in other microwave bands.

(a) ET licensees may negotiate with FMS licensees authorized to use frequencies in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands, for the purpose of agreeing to terms under which the FMS licensees would:

- (1) Relocate their operations to other fixed microwave bands or other media; or alternatively
- (2) Accept a sharing arrangement with the ET licensee that may result in

an otherwise impermissible level of interference to the FMS operations.

(b) Except as provided in paragraph (c) of this section, FMS operations in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands, with the exception of public safety facilities defined in §101.77, will continue to be co-primary with other users of this spectrum until two years after the FCC commences acceptance of applications for ET services (voluntary negotiation period), and until one year after an ET licensee initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). In the 1910-1930 MHz band allocated for unlicensed PCS, FMS operations will continue to be co-primary until one year after UTAM, Inc. initiates negotiations for relocation of the fixed microwave licensee's operations. Except as provided in paragraph (c) of this section, public safety facilities defined in §101.77 will continue to be co-primary in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (mandatory negotiation period). If no agreement is reached during either the voluntary or mandatory negotiation periods, an ET licensee may initiate involuntary relocation procedures. Under involuntary relocation, the incumbent is required to relocate, provided that the ET licensee meets the conditions of §101.75.

(c) Voluntary and mandatory negotiation periods for PCS C, D, E, and F blocks are defined as follows:

(1) Non-public safety incumbents will have a one-year voluntary negotiation period and a one-year mandatory negotiation period; and

(2) Public safety incumbents will have a three-year voluntary negotiation period and a two-year mandatory negotiation period.

(d) Relocation of FMS licensees in the 2165-2200 MHz band by Mobile-Satellite Service (MSS) licensees will be

subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

- (1) Non-public safety incumbents will have a two-year mandatory negotiation period; and
- (2) Public safety incumbents will have a three-year mandatory negotiation period.

[62 FR 12758, Mar. 18, 1997, as amended at 65 FR 48182, Aug. 7, 2000]

**§ 101.71 Voluntary negotiations.**

During the voluntary negotiation period, negotiations are strictly voluntary and are not defined by any parameters. However, if the parties have not reached an agreement within one year after the commencement of the voluntary period for non-public safety entities, or within three years after the commencement of the voluntary period for public safety entities, the FMS licensee must allow the ET licensee if it so chooses to gain access to the existing facilities to be relocated so that an independent third party can examine the FMS licensee's 2 GHz system and prepare an estimate of the cost and the time needed to relocate the FMS licensee to comparable facilities. The ET licensee must pay for any such estimate.

[62 FR 12758, Mar. 18, 1997]

**§ 101.73 Mandatory negotiations.**

(a) If a relocation agreement is not reached during the voluntary period, the ET licensee may initiate a mandatory negotiation period. This mandatory period is triggered at the option of the ET licensee, but ET licensees may not invoke their right to mandatory negotiation until the voluntary negotiation period has expired.

(b) Once mandatory negotiations have begun, an FMS licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other that is reasonably necessary to facilitate the relocation process. In evaluating claims that a party has not negotiated in good faith, the FCC will consider, *inter alia*, the following factors:

(1) Whether the ET licensee has made a *bona fide* offer to relocate the FMS li-

censee to comparable facilities in accordance with Section 101.75(b);

(2) If the FMS licensee has demanded a premium, the type of premium requested (*e.g.*, whether the premium is directly related to relocation, such as system-wide relocations and analog-to-digital conversions, versus other types of premiums), and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate (*i.e.*, whether there is a lack of proportion or relation between the two);

(3) What steps the parties have taken to determine the actual cost of relocation to comparable facilities;

(4) Whether either party has withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process.

(c) Any party alleging a violation of our good faith requirement must attach an independent estimate of the relocation costs in question to any documentation filed with the Commission in support of its claim. An independent cost estimate must include a specification for the comparable facility and a statement of the costs associated with providing that facility to the incumbent licensee.

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2165–2200 MHz band. Mandatory negotiations will commence when the Mobile-Satellite Service (MSS) licensee informs the fixed microwave licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput*. Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, comparable facilities provide an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, comparable facilities provide equivalent data loading bits per second (bps).

(2) *Reliability*. System reliability is the degree to which information is